

MESSNER REEVES LLP

TORBEN M. WELCH
twelch@messner.com
Licensed in UT, CO & NY

DIRECT DIAL:
(801) 683 2021

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*Re: Personal Surety Registration Exemption
Mr. Timothy Arellano*

To Whom It May Concern:

Pursuant to Utah code and Federal code, an individual/personal surety is exempted from registration or state licensing requirements.

Utah Code Annotated § 52-1-13 sets forth the qualifications and requirements for individual sureties:

- (1) In all cases where a bond is required of any public officer in this state, either a corporate surety bond or a personal surety bond may be given. The bonds shall be subject to approval as provided by law. A personal surety bond may not be approved except with two or more sureties.
- (2) Each surety shall first make and file an affidavit declaring that the individual is a resident of the state of Utah and is worth the sum specified in the undertaking, over and above all of the individual's debts and liabilities and exclusive of property exempt from execution. The individual shall include in the affidavit a detailed statement of all of the individual's assets and liabilities.
- (3) Any person who makes a material false statement with respect to Subsection (2) is guilty of a third degree felony.

Mr. Timothy Arellano has substantially complied with the above statutory requirements. Subsection (1) states that when a bond is required that a corporation or an individual surety may write that bond. The qualifications for an individual surety require that that individual surety be reinsured. Mr. Arellano obtains reinsurance through Best A+ rated companies in order for him to comply with the statute.

The statute does not require any registration or licensing with the State of Utah under these circumstances; rather, it requires compliance with the provisions noted above. Mr. Arellano is an individual surety writing bonds. He is the principal under such bond. Licensure is required only

if the surety is acting as an agent or an employee for another. Here, any effort by Mr. Arellano to obtain a license would be invalid as Mr. Arellano cannot act as an agent for himself. When a company deals with Mr. Arellano, they are dealing with the principal and the individual who personally underwrites the bonds.

Subsection (2) of the statute requires that an individual surety files an affidavit with specific statements regarding residency and liquidity. Mr. Arellano has complied with the statute and includes his affidavit with every bond he writes. In addition, Mr. Arellano has legal and trustee oversight to insure 3rd party review and compliance.

In addition to the statutory requirements, Mr. Arellano further includes an Irrevocable Trust Receipt (the "ITR") from the holding trust company with each surety bond issued. The ITR is the evidence that funds are set aside and segregated in the amount required to cover the Surety bond in the event that a valid claim is presented on demand. While such presentation is not required under the statute, the ITR may be considered as part of the requirements of subsection (2), and if such statement is materially false or misleading, subjects Mr. Arellano to the penalties in subsection (3).

Furthermore, the same qualifications and procedure are stated in the Federal code under the FAR Act, which is codified in Parts 1 through 53 of Title 48, Chapter 1 of the Code of Federal Regulations. The specific section under which an individual surety is regulated is 28.203. This section gives direction to and authorizes individuals who have the capacity to write bonds. Federal Statutory regulations were created for Individual Sureties to allow them to participate in surety bonding of federal projects, which Mr. Arellano has done on multiple occasions.

Authorization for acting without the requirement of state registration is found at CFR 28.203.1 (a), which states: "An individual surety is acceptable for all types of bonds except position schedule bonds." The assets that can be pledged by an Individual Surety must meet certain requirements per 31 U.S.C. 9310, and those assets must be pledged in accordance with 31 CFR 225. The same analysis noted above related to the Utah statutory requirements applies to the federal code requirements (as the Utah code requirements were written to reflect those found in the federal code).

Accordingly, Mr. Timothy Arellano follows the state and federal requirements for issuance of a personal surety bond and is exempt from licensing or registration requirements as a result thereof.

Very truly yours,

MESSNER REEVES LLP



Torben M. Welch